KRISHNAMURTHY NAGARATNAM & ANOR.

v.

THE MALAYAN FINANCE CORP. BHD.

SUPREME COURT, KUALA LUMPUR
SALLEH ABAS LP
GEORGE SEAH SCJ
SYED AGIL BARAKBAH SCJ
[CIVIL APPEAL NO. 125 OF 1985]
19 FEBRUARY 1986

CIVIL PROCEDURE: *Order 14 of Rules of the High Court 1980 - Principles of granting - Where sum claimed differed from sum to be signed - Explanation by applicant - Delay in filing application.*

The respondents (finance company) had at first instance, sued five defendants (including the two appellants in this appeal) for the recovery of a sum of RM66,303.89 which arose in connection with a business deal in which the finance company agreed to finance the sale of motor vehicles by NKM Credit Sdn Bhd. to members of the public under hire purchase agreements. As part of the deal the other four defendants (including the two appellants) guaranteed to indemnify the finance company against any losses incurred or suffered. The suit was commenced on 3 December 1983. Upon a request by the defendant's solicitors on 17 April 1984 the finance company's solicitors supplied to the defendants' solicitors copies of documents relating to the claim.

On 31 May 1984, the finance company took out a summons-in-chambers under O. 14 of the Rules of High Court 1980 ("RHC") to sign final judgment but for a smaller sum. Two objections were raised by the defendants, that is,

(a) no summary judgment under O. 14 could be given when the amount claimed differed form the amount to be signed and

(b) the finance company was not entitled to the summary judgment because they were guilty of delay in applying for it.

The Senior Assistant Registrar accepted both the objections and dismissed the application of the finance company. On appeal to the High Court, V.C. George J reversed the decision of the Senior Assistant Registrar. Two of the defendants then appealed to the Supreme Court.

Held:

[1] In relation to objection (a) above, the Court approved the view expressed by V.C. George J that the matter was fully explained by the finance company to the effect that credit had to be given for the value of cars which the finance company repossessed between the date of the writ and the date of the summons-in-chambers. There is no need for the statement of claim to be amended to make this adjustment.

[2] In relation to objection (b) above, the law as to the time when an application for an O. 14 judgment could be made is settled law. The application must be made after an appearance has been entered and it could be made either before or after the delivery of defence provided that where it was made after the delivery of the defence, the plaintiff must explain the delay. If this explanation was not accepted by the Court, no O. 14 judgment could be signed. (*Ratio decidendi in McLardy v. Slateum* [1890] 24 QBD 504 CA applied).

[3] The delay in this case was not such as to inhibit the Court from granting the O. 14 application made by the finance company.

[Appeal dismissed with costs.]

Cases referred to:
McLardy v. Slateum [1890] 24 QBD 504
Comptroller-General of Inland Revenue, Malaysia v. Weng Lok Mining Co. Ltd. [1969] 2 MLJ 98
Societe des Etains de Bayas Tudjuh v. Woh Heng Mining Kongsi [1978] 2 MLJ 267

Legislation referred to:
Rules of the High Court 1980, O. 14

For the appellants - Bella Loo; M/s. Ng Ek Teong & Partners
For the respondents - K. Anandham; M/s. Skrine & Co.

JUDGMENT

Salleh Abas LP:

In the Court below the respondents sued five defendants including the two appellants in this appeal for the recovery of a sum of RM66,303.89 which arose in connection with a business deal in which the respondents agreed to finance the sale of motor vehicles by NKM Credit Sdn. Bhd. (the first defendant) to members of the public under hire purchase agreements. As part of the deal the other four defendants (including the two appellants) guaranteed to indemnify the respondents against any losses incurred or suffered. This suit was commenced on 3 December 1983.

The first defendant did not enter an appearance and so a judgment in default was entered against them. The other defendants had all entered their appearances on diverse dates. The present appellants entered theirs on 10 and 4 April 1984 respectively.

On 17 April 1984 upon a request by the defendants' solicitors, the respondents' solicitors supplied to the former copies of documents relating to the claim.

On 31 May 1984 the respondents took out a summons-in-chambers under O. 14 against the four defendants to sign a final judgment but the sum to be signed was a smaller sum i.e. RM66,303.89. The reason for this reduction was fully explained by the respondents to be due to the fact that the value of vehicles repossessed in the meantime had to be taken into account.

The summons-in-chambers was heard by a Senior Assistant Registrar. Two objections were raised by the defendants. Firstly, no summary judgment under O. 14 could be given when the amount claimed differed from the amount to be signed. Secondly, the respondents were not entitled to the summary judgment because they were guilty of delay in applying for it. The Senior Assistant Registrar accepted both the objections and hence dismissed the respondents' application.

On appeal to the High Court, George J. reversed the decision of the Senior Assistant Registrar.

Only two defendants appeal to us, namely defendant No. 3 and defendant No. 4.

We are of the view that there is no merit in this appeal and that it should be dismissed.

In the first place, as regards the objections to the difference between the amount claimed and the amount to be signed in the judgment, we wholly agree with the view expressed by George J in his grounds of decision in that the matter was fully explained by the respondents to the effect that credit had to be given for the value of cars which the respondents repossessed between the date of the writ and the date of the summons-in-chambers. We do not see any need to amend the statement of claim for the making of this adjustment.

In the second place the law as to the time when an application for an O. 14 judgment could be made is settled law. The application must be made after an appearance has been entered and it could be made either before or after the delivery of defence provided that where it was made after the delivery of the defence, the plaintiff must explain the delay. If this explanation was not accepted by the Court no Order 14 judgment could be signed. This is the *ratio decidendi in McLardy v. Slateum* [1890] 24 QBD 504 CA. This case was followed by Raja Azlan Shah J (as he then was) in *Comptroller-General of Inland Revenue, Malaysia v. Weng Lok Mining Co. Ltd.* [1969] 2 MLJ 98 and Abdoolcader J. (as he then was) in *Societe des Etains de Bayas Tudjuh v. Woh Heng Mining Kongsi* [1978] 2 MLJ 267.

In the present appeal no defence was ever filed in by the appellants and other defendants. All that the respondents did before applying for the judgment was to await the next move to be made by the appellants and their co-defendants after appearances had been entered by them. We do not think that the delay in this case is such as to inhibit the Court from granting the respondents' application for an O. 14 judgment.

We therefore dismiss the appeal with costs and direct that the deposit be paid to the respondents on account of taxed costs.

Also found at [1986] 1 CLJ 541